

1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION
4

5 IN RE: § CASE NO. 20-33948-H1-11
§ (JOINTLY ADMINISTERED)
6 FIELDWOOD ENERGY LLC and § HOUSTON, TEXAS
DYNAMIC OFFSHORE RESOURCES § WEDNESDAY,
7 RESOURCES NS, LLC, § AUGUST 5, 2020
Debtors. § 8:00 A.M. TO 9:13 A.M.
8

9 TELEPHONIC FIRST DAY HEARINGS (CONT'D)

10 BEFORE THE HONORABLE MARVIN ISGUR
11 UNITED STATES BANKRUPTCY JUDGE
12
13

14 APPEARANCES: SEE NEXT PAGE

15 COURTROOM DEPUTY/ERO: RECORDED THROUGH COURTSPEAK
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(Please see also electronic appearances.)

1 HOUSTON, TEXAS; WEDNESDAY, AUGUST 5, 2020; 8:00 A.M.

2 THE COURT: All right, good morning. We're here
3 on the Fieldwood Energy case for a continuation of first day
4 hearings. It's case 20-33948. We've made electronic
5 appearances.

6 Mr. Carlson, I have enabled your phone. It's my
7 understanding that you're taking the lead this morning, from
8 the way we left things yesterday. If there's been a change
9 in that, just let me know. But your line is the one that's
10 authorized right now.

11 MR. CARLSON: Good morning, Your Honor. Cliff
12 Carlson of Weil Gotshal & Manges on behalf of the Debtors.

13 THE COURT: Good morning.

14 MR. CARLSON: Your Honor, I think we would like to
15 just move forward with the agenda at kind of where we left
16 off when we said -- I think where we left off, we were about
17 to get on file a revised form of interim DIP order --

18 THE COURT: I've been looking.

19 MR. CARLSON: -- that we --

20 THE COURT: I've been looking.

21 MR. CARLSON: It should be -- it should be on file
22 within the next couple minutes.

23 THE COURT: All right.

24 MR. CARLSON: And we can circle back on that
25 motion after --

1 THE COURT: Yeah, you might want to get a little
2 closer to your phone, Mr. Carlson.

3 MR. CARLSON: Can you hear me okay now?

4 THE COURT: That's better. Thank you.

5 MR. CARLSON: So, Your Honor, the next item on the
6 agenda is the insurance motion, and that is at Item No. 2 on
7 the agenda filed at Docket No. 4. And in this motion we're
8 seeking really three types of relief.

9 Debtors want to continue their insurance programs
10 and pay all prepetition amounts in the form of insurance
11 premiums and claims, the workers compensation claims. The
12 second form of relief is to continue their surety bond
13 program and pay any prepetition amounts that are owed.
14 And then third is to modify the automatic stay to allow
15 employees to proceed with workers compensation claims
16 against the company.

17 And as far as insurance programs, we have
18 approximately \$8.4 million in obligations coming due in the
19 interim period, and about -- approximately 1.5 million of
20 that amount is prepetition (glitches in the audio) workers
21 compensation plan, and then the balance post-petition
22 amounts for (glitches in the audio).

23 We don't believe we owe any amounts for -- under
24 the surety bond program, but we do wish to continue to pay
25 amounts owed in connection with that program in the ordinary

1 course of business. It's a critical part of the operation
2 that approximately \$1.2 billion in surety bonds remains
3 outstanding and about 15 million of premiums last year, and
4 I would ask for authority to continue that program as well.

5 We have never received an objection from a
6 surety bond holder, Liberty Mutual and Hanover. I
7 understand Mr. Perez has been in discussions with the
8 counsel and would turn it over to him to discuss those
9 discussions.

10 THE COURT: All right, Mr. Perez, go ahead.

11 MR. PEREZ: Good morning, Your Honor. Alfredo
12 Perez on behalf of the Debtors. Your Honor, we have been
13 in discussions with Mr. Bains, who represents Liberty and
14 Hanover. He suggested some language. We actually -- I
15 spoke with him before this call and sent him some language.

16 So if we could defer this to the end of the
17 hearing, I would appreciate that. Maybe we could work
18 through that language. Otherwise, we would request that the
19 Court approve the order, and then we will submit what I
20 would hope to be a agreed order at some point later today,
21 if we can't get it done during the course of the hearing.

22 THE COURT: I think Mr. Bains and Mr. Eisenberg
23 both want to address this issue, so let me hear from Mr.
24 Bains and then we'll go to Mr. Eisenberg.

25 MR. BAINS: Good morning, Your Honor. Brandon

1 Bains on behalf of Hanover Insurance Company as well as
2 Liberty Mutual Insurance Company. I had told Mr. Perez just
3 before this, we had spoke this morning. He suggested that
4 revise language that I'm looking at now. I feel pretty
5 confident that we can work through any issues.

6 I don't know that I can even characterize it as an
7 objection; I think it's more of just clarifying some of the
8 language to make sure the sureties have some protections in
9 terms of the day-to-day operations on this. But I -- at
10 least for my clients -- am pretty confident that I can work
11 with counsel and get some revised language in front of the
12 Court hopefully in the very near future.

13 THE COURT: All right, thank you. And Mr.
14 Eisenberg, let me get your mike activated there. Go ahead,
15 please.

16 MR. EISENBERG: Thank you, Your Honor. May I be
17 heard?

18 THE COURT: Yes, sir.

19 MR. EISENBERG: Thank you. Yes, I would also like
20 to review the order so I can kind of get mine finalized as
21 well while the hearing is going on.

22 THE COURT: That's fine. Mr. Perez, can you have
23 someone forward a copy of what you sent to Mr. Bains, on
24 over to Mr. Eisenberg, and when we circle back he'll have an
25 opportunity to review it.

1 MR. PEREZ: Yes, Your Honor. I'll do that right
2 now. And, Your Honor, I just want to -- once we have some
3 agreement on this language, I need to run through the paces
4 to make sure that I have all consents on our side, so it
5 might take a few more minutes even if we have agreement with
6 Mr. Bains and Mr. Eisenberg.

7 THE COURT: Yeah. no, the only issue is whether
8 there's going to be some disputes that I'll need to call on
9 today. And if we need to do that later today, we can, or
10 circle back even this morning or just call on you all to
11 file an agreed order, you know, and then request a hearing
12 if you can't agree on it. I'm not too nervous about what
13 you're doing.

14 I do have a question on the function of paragraph
15 1 of the order, which is why I've got the order focused up
16 on the screen on paragraph 1. I think maybe unintentionally
17 -- and that's what I'm trying to figure out -- this would
18 authorize the Debtors to pay reimbursement and indemnity
19 obligations to the sureties prior to the time that the
20 surety bonds -- prior to the time of the final order.

21 So let's assume that a surety bond gets called on,
22 or some other security gets called on and there's a million
23 dollar draw. This would, I think, authorize you to
24 reimburse that million dollars.

25 I don't think that's what you're intending to do.

1 I think you're intending to pay premiums, I think you're
2 intending to be sure things are safe. But I do think it
3 would give that kind of authority and I'm a little nervous
4 about doing that on day one. And I need to understand
5 better whether that was something you were seeking authority
6 to do or just something that I'm thinking of and you all
7 hadn't thought of in the language.

8 Mr. Carlson or Mr. Perez, whoever wants to deal
9 with that?

10 MR. PEREZ: This is Alfredo Perez. That was not
11 our intention. We're not seeking to be paying those types
12 of payments. Really, we're seeking just authority to
13 capture what you said, paying surety premiums.

14 I know the Debtors would be comfortable with
15 making that clarification, and with that form of order we
16 could work on that language too.

17 THE COURT: All right. And I also don't know that
18 it's -- this is a pretty unusual case, given what you're
19 doing with Ms. Russell's client. And you know how nervous I
20 am normally about these things, but given where the case is
21 going, I don't want you all to feel uncomfortable. If in a
22 week you need to pay a reimbursement, come back on an
23 emergency basis and we'll deal with it.

24 I just don't think I should authorize it generally
25 on first days, you know, without knowing what we're biting

1 off here. But it may be appropriate to pay some sort of a
2 reimbursement or an indemnity obligation under a bond or
3 other credit, something like that.

4 Just if you can include language that says you
5 wont' do that without a further court order or something of
6 that nature towards -- it's not just prohibited but you can
7 come back. Does that work for you all?

8 MR. PEREZ: Yes, Your Honor.

9 THE COURT: Let me ask Mr. Bains and Mr. Eisenberg
10 if you've got any problem with the concerns that I'm
11 raising?

12 MR. BAINS: This is Brandon Bains. I don't, Your
13 Honor.

14 THE COURT: Thank you.

15 MR. EISENBERG: This is Philip Eisenberg on be
16 half of US Specialty. No, Your Honor. I understood it.

17 THE COURT: And from 817-319-9277, we have someone
18 else that wanted to make a comment on this particular
19 matter?

20 MR. SCHARFENBERG: Good morning, Your Honor. This
21 is Elliot Scharfenberg. I represent RLI Insurance Company.
22 We're another surety. If you wouldn't mind, can we get the
23 revised order language before it is finalized? I can shoot
24 you my email address.

25 THE COURT: Mr. Perez, is that okay with you? Can

1 you send it up to Mr. Scharfenberg's email?

2 MR. PEREZ: Yes, sir. If he can just send me an
3 email, alfredo.perez@weil.com, I can forward it to him right
4 now.

5 MR. SCHARFENBERG: Thank you, Your Honor.

6 THE COURT: Thank you.

7 MR. SCHARFENBERG: Mr. Perez, thank you.

8 THE COURT: Go ahead.

9 MR. BAINS: I just want to say, Mr. Perez, This is
10 Brandon Bains again. I already sent an email over to Mr.
11 Eisenberg and I can add Mr. Scharfenberg on there as well
12 and get all the surety folks on one email for the revised
13 language. It's easier, as you may have some other things on
14 your plate this morning.

15 MR. PEREZ: Thank you. I appreciate that. I need
16 all the help I can get.

17 MR. BAINS: I'll get that taken care of right now.

18 THE COURT: All right. Ms. Russell, I want to be
19 sure that the addition that I'm talking about doesn't
20 interfere with Apache's expectations in its deal where I
21 leave open the question but just don't authorize it
22 generally on first days.

23 I know you're on -- I see you and I know you're on
24 the phone. I'm going to find your name and hear from you
25 about that, if that's okay.

1 Ms. Russell, does that cause any heartburn to
2 Apache?

3 MS. RUSSELL: Your Honor, I don't believe it does.

4 THE COURT: All right, thank you.

5 Okay, why don't we do this. You all can circle
6 back to this during the hearing if you choose. Otherwise,
7 I'm going to approve the surety and the insurance bond order
8 once the one change that I'm suggesting gets incorporated
9 and Mr. Bains, Mr. Eisenberg, and Mr. Scharfenberg sign off
10 on it.

11 You can do that if you want by filing it under a
12 C&O that says that you've conferred with them and they've
13 approved, you can have their signatures at the bottom. I
14 just want something affirmative that they have in fact
15 signed off on it.

16 If they don't sign off on it or you all can't
17 reach an agreement, you're free to authorize a further
18 hearing -- or excuse me, to request a further hearing and
19 I'll get you one quick. Everybody okay with that?

20 MR. PEREZ: Yes, Your Honor.

21 THE COURT: Thank you. Mr. Carlson, where do you
22 want to go next?

23 MR. CARLSON: Your Honor, next on the agenda is
24 our vendor motion filed at Docket No. 7.

25 THE COURT: I'll get that up. All right, go

1 ahead, please.

2 MR. CARLSON: So, Your Honor, the Debtors operate
3 over 300 platforms in the Gulf of Mexico offshore and own
4 an interest in 364 different leases, so there are many
5 creditors that Debtors are obligated to pay in the ordinary
6 course, and there's sort of four buckets of claimants here.

7 There are the Interest Owner Payments that those
8 are holders of royalty interests, things of that nature.
9 The second category are joint interest billings where the
10 company has non-operator parents paying their share to
11 operators of platforms of various expenses.

12 And the third category is more of a catch-all
13 for all the operating expenses. These are payments to
14 service providers on the offshore, many of which have least
15 rights against the Debtors' property.

16 And then the fourth category is the section titled
17 503(b)(9) claims. These are just goods that were received
18 by the Debtors within 20 days of the Petition date. And so
19 if you look at page 3 of the motion that provides a
20 breakdown of what's coming due, it's about 9.6 million in
21 joint interest billings, 59.4 million in E&P operating
22 expenses which is for various service providers, and then
23 4.6 million in 503(b)(9) claims.

24 You'll see in our proposed interim order that it's
25 subject to each of those caps. In addition, we have the

1 requirement in paragraph 3 that each of the E&P claimants
2 are required to sign a customary trade agreement that's on
3 terms that are as favorable or more favorable than under the
4 terms they were providing services prepetition.

5 So, Your Honor, unless Your Honor has questions,
6 we would request that you enter the order in the amount and
7 form attached to the motion.

8 THE COURT: Can you just take me through and
9 define for me what an E&P claimant is under this? Is that
10 everyone on all categories or is it just certain parties in
11 certain categories?

12 MR. CARLSON: These are third parties that provide
13 gathering, transportation and processing services. This
14 also includes supplemental workforce obligations, lease
15 operating expenses, other exploration and production costs,
16 capital expenditures and related costs.

17 THE COURT: Does it include the 503(b)(9)
18 claimants?

19 MR. CARLSON: It does not. So 4.6 million of the
20 503(b)(9) claims is exclusive of the estimated 69.4 million.
21 We are --

22 THE COURT: Yeah, I'm looking at paragraph 3 and I
23 got it that the joint interest shouldn't be included in
24 this, but it seems to me that if you're going to pay
25 somebody on a 503(b)(9) claim, they should enter into trade

1 agreements as well. Is there anything wrong with that as to
2 the 503(b)(9) payments?

3 MR. CARLSON: No, Your Honor. I think that those
4 are -- we're fine with 503(b)(9) claimants signing the
5 customary agreements while -- we'll just defer to Mr. Dane,
6 but I think that we'll get it.

7 THE COURT: Mr. Dane, let's be sure that you're
8 okay with that. In general, it will tie your hands from
9 making a 503(b)(9) payment unless the 503(b)(9) vendor
10 agrees to continue to provide you goods and services. It
11 gives you a hell of a negotiating authority because you
12 can't do it.

13 So the question is whether it's going to hurt you
14 by tying your hands and making you do it. In general, my
15 experience has been that folks in your position like to be
16 able to go to their vendor and say, "I really want to pay
17 you but the court won't let me unless you do a trade
18 agreement." So it's up to you. What do you think?

19 MR. DANE: I think I agree with Your Honor, with
20 your position.

21 THE COURT: Thank you. Will those changes work
22 that I did, to cover that?

23 MR. CARLSON: Yes, it works the way it is now.

24 THE COURT: All right. Is there any party that
25 objects to authorizing -- essentially allowing the Debtors

1 to continue to make payments to these folks in the ordinary
2 course?

3 I think it's justified by the original
4 declarations. The payment of the joint interest billings
5 are obvious in terms of why that needs to occur in order
6 to keep the projects going. The payments of operating
7 expenses, the Debtors determined they need to do that.
8 These become critical vendors because of the nature of
9 the trade agreements.

10 I think it is appropriate to do it, and obviously
11 it's to the Debtors' interest to avoid these liens. When
12 you counterbalance that, I think within the Code, there's
13 some lien -- potential lienholders on the 503(b)(9) rights
14 or people that have the right to assert an admin claim under
15 503(b)(9) should in fact agree to trade terms.

16 So if any party objects, please press five-star.

17 Mr. Carlson, when was your final -- is that August
18 24th at 1:30?

19 MR. CARLSON: That's right, Your Honor.

20 THE COURT: All right. The vendor order has been
21 signed. Give me just a moment to send it over to Mr. Laws
22 so that he can get it docketed.

23 And it's been sent to docketing. All right? What
24 do you want to do now?

25 MR. CARLSON: Thank you. Your Honor, the revised

1 interim DIP order has been filed at Docket No. 54.

2 THE COURT: All right, I've got that -- the
3 redline of that up on the screen and I'm just going to take
4 a look through it. I assume the parties are going to look
5 at it at the same time I'm looking, so if somebody needs me
6 to slow down, please press five star.

7 I'm only going to -- we've looked at everything
8 other than the redlining, so I'm only going to try and get
9 down to that.

10 MR. CARLSON: And at page 25 is the first change.

11 THE COURT: All right. (Reviewing order.) Does
12 anybody need more time to review that? If so, please press
13 five star.

14 MR. EISENBERG: Your Honor?

15 THE COURT: Yes, sir.

16 MR. EISENBERG: This is Philip Eisenberg. I don't
17 need more time to review it. I have a comment to it.

18 THE COURT: Let me do -- let me do one thing. Let
19 me pull up -- so that I can have now the actual one as well.
20 Give me just a second.

21 Okay, so I've got the clean and the redlined both
22 up on the screen. Why don't you give me your comment?

23 MR. EISENBERG: Yes, Your Honor. Last evening
24 when I spoke with Mr. Carlson prior to seeing this redline,
25 which we saw this morning, I had indicated to him that when

1 we had raised this with Your Honor, that we had raised
2 this in connection with various other rights, including
3 recoupment, setoff, contractual reasons under operating
4 agreements and other real rights that other parties might
5 that are permitting encumbrances ahead of liens that the
6 banks had under their own credit agreements.

7 And then Your Honor mentioned -- and lienholders.
8 And so in speaking with Mr. Carlson yesterday, I indicated
9 that we would want that -- the inclusion of that in here as
10 well. And so that, I believe -- otherwise that we're trying
11 to keep from being impaired with this interim order, Your
12 Honor.

13 THE COURT: I'm not sure on your team who is
14 addressing that, Mr. Perez.

15 MR. CARLSON: Your Honor, I will, Your Honor. So
16 what we have here is intended to capture-- it's intended to
17 say this interim order is not affecting the rights or is not
18 amending the rights of any parties in those liens. The way
19 I'm reading it is the rights of any party asserting such
20 statutory liens, if any, are not amended or modified under
21 this interim order with respect to such statutory lien.

22 THE COURT: So I think his question is what if he
23 has, as an example, a contractual right to certain, let's
24 say, recoupment or setoffs under a contract, and that
25 contract is assigned over to the DIP lender, are you cutting

1 off his setoff or recoupment rights under the contract, by
2 way of example?

3 MR. CARLSON: No, I don't think we are. I think
4 this is -- this language is an embodiment to -- is intended
5 to capture and say that this interim order really is not
6 affecting any of those rights. That's how I read it and I
7 don't think the intent was to cut off any of those rights,
8 but I --

9 THE COURT: I think I can just -- if that's the
10 intent, I think I can fix that, so let me try and get that
11 done.

12 MR. CARLSON: Thank you, Your Honor.

13 THE COURT: (Amending and displaying order.) Does
14 that solve the issue?

15 MR. EISENBERG: Again, Your Honor, do you mind
16 putting it on the full screen? My eyes just can't see this
17 on the split screen.

18 THE COURT: Sure. (Displaying order.)

19 MR. EISENBERG: Okay. There was language that was
20 there and I guess Your Honor took it out, so -- okay, there
21 it is. All right. Okay, so on page 25 after (A), you've
22 got statutory rights but you don't have contractual rights.
23 So --

24 THE COURT: Yeah, no, the contractual rights I've
25 got under (C) and (D).

1 MR. EISENBERG: Oh. Yeah, but -- okay, you've got
2 -- but, you've only got contractual rights to setoff. There
3 should be contractual liens that were granted.

4 THE COURT: Well, no, but if there's a contractual
5 lien that was granted that wasn't perfected, you don't have
6 one.

7 MR. EISENBERG: No, no, that's true.

8 THE COURT: But you do have a -- you may have a
9 setoff right under common law that we're not going to cut
10 off if it existed. And a recoupment right may not have
11 existed on the date of the petition. It could arise later,
12 and that's being preserved.

13 MR. EISENBERG: Yes, Your Honor, and I --

14 THE COURT: But I think you have all the rights
15 you should have.

16 MR. EISENBERG: No, no, I totally appreciate that,
17 and I appreciate the attention Your Honor's making with the
18 recoupment. But what I'm saying is you don't -- you have
19 contractual rights -- (C) is contractual rights to sell.

20 And in the preface, valid, non-avoidable statutory
21 liens that are contractual rights, which I would assume
22 includes contractual liens. But then it goes on in the way
23 the sentence is formulated, it goes back to (A). It says
24 statutory rights but it doesn't have contractual rights that
25 were perfected, only contractual liens that were perfected.

1 So after statutory rights, after the letter (A),
2 I would have --

3 THE COURT: Got it.

4 MR. EISENBERG: -- an alter --

5 THE COURT: I got it. I got it.

6 MR. PEREZ: Your Honor, I think that's covered in
7 the part before this, above. I think if he has -- if he has
8 a valid consensual lien that was -- that is senior to the --
9 is senior to the (a) being other liens, that he keeps that,
10 and that's what the first part of this paragraph does. It's
11 not -- we're dealing with non-consensual liens here.

12 THE COURT: Yeah. So except for -- let me just --
13 I think I can get this. Give me a shot. (Amending order.)
14 So if you're junior to the whole stack and you file a lien,
15 you don't jump ahead of the whole stack. You had to have
16 filed the first lien.

17 MR. EISENBERG: Well, Your Honor, I will submit to
18 you that under the formulation credit agreement that it only
19 has to be a permitted lien that the first lienholders and
20 their credit agreements and liens that would be a permitted
21 encumbrance of a prime lien, and so --

22 THE COURT: Oh, I agree with that, but that is
23 covered by the prior language that Mr. Perez points out. If
24 it's a permitted lien, this doesn't prime it.

25 MR. EISENBERG: All right, I appreciate that. If

1 that's what the intention is, then this language will be
2 satisfactory and I appreciate everybody's consideration.
3 And in particular Mr. Carlson for all the communication.

4 THE COURT: And putting up with you probably.

5 MR. EISENBERG: Yes. No doubt about that, Your
6 Honor. He'll talk about that when I'm long gone.

7 THE COURT: Mr. Perez or Mr. Carlson, does this
8 language work for your client?

9 MR. CARLSON: I think it works for the Debtors,
10 Your Honor. I would want to make sure it works for our DIP
11 lenders, of course, and I'd want to confirm with Ms.
12 Tsiouris first.

13 THE COURT: Ms. Tsiouris, let me get your line
14 activated here. I think I mis-clicked. There we go.
15 Ms. Tsiouris, good morning.

16 MS. TSIOURIS: Good morning, Your Honor. For the
17 record, Natasha Tsiouris, Davis Polk & Wardwell. I think at
18 the bottom line of this is that I believe (C) and (D) should
19 be tied to the statutory lienholders who fit into categories
20 (A) and (B), so the suggestion I would make is instead of
21 making a separate entry, just do a comma that includes the
22 statutory rights and automatically sets out the Petition
23 Date or --

24 THE COURT: Why don't you dictate more
25 specifically to me what you want because I'm not following

1 exactly what the change is, and I'm happy to be a secretary
2 here for a bit.

3 MS. TSIOURIS: Thank you, Your Honor. So instead
4 of separate categories for (C) and (D), I think it should be
5 tied to those lien -- I can't see all the way up, but it
6 should be those lienholders that have statutory rights that
7 were perfected as of the Petition Date or the statutory
8 rights were perfected as of the Petition Date.

9 THE COURT: Well, those aren't going to arise
10 under statute. I think I'm missing how the language would
11 work, and maybe you can literally dictate to me what you
12 think would work, so that I can take a shot at it.

13 MS. TSIOURIS: So provided, further, that, for the
14 avoidance of doubt, nothing herein provides that the DIP
15 liens are deemed to prime any valid, non-avoidable statutory
16 liens (indiscernible) that (A) statutory rights were
17 perfected as of the Petition Date or (B) statutory rights
18 were in existence immediately prior to the Petition date and
19 are perfected subsequent to the Petition Date as permitted
20 by section 546(b) of the Bankruptcy Code and the rights of
21 any party asserting such statutory lien (if any) are not
22 amended or modified under this Interim Order with respect to
23 such statutory lien, including any contractual right to set
24 off such right as of the Petition Date or --

25 THE COURT: Hold on. Let me just read it. I

1 don't think that works because you're now including
2 something that isn't defined there because the setoff
3 rights, for example, aren't perfected subsequent to the
4 Petition Date as permitted by section 546(b). They simply
5 exist free of the statute. And that's why I thought we
6 needed a separate listing.

7 MS. TSIOURIS: And, again, under contractual
8 rights to set off, contractual rights are defined.

9 THE COURT: I don't think they are defined in the
10 statute. I think that's the problem that Mr. Eisenberg is
11 raising. So he has a -- let's say that he has in his surety
12 agreement a contractual right to set off a deposit that he's
13 holding against an indemnity obligation that somebody has to
14 his client -- and I don't know if he has that or not --
15 we're preserving that right for him. Not because of the
16 statute, but because of the contract.

17 MS. TSIOURIS: Yeah, but -- and then is it defined
18 in the order, because it's not necessary for those who have
19 a writing. It wouldn't be a separate writing. They have,
20 you know, a contractual right to set off. They would be
21 (indiscernible).

22 THE COURT: Got it. Hold on. Contract rights of
23 any non-RSA party. I got your point. And I think that
24 probably fixes it, right?

25 MS. TSIOURIS: I think that does.

1 MR. EISENBERG: And then, Your Honor, but I
2 thought that Contractual Rights is capitalized in (B).
3 And I think (indiscernible) is lower case.

4 THE COURT: Got it. But I also think she has a
5 legitimate concern that this shouldn't take away her right
6 to prime people that she's specifically got a deal with on
7 priming them. So it's for the folks who aren't here. Or
8 who are here and that's really trying to catch up.

9 MR. CARLSON: And, Your Honor, elsewhere in the
10 order it says that Apache, not being here, it primes the
11 Apache collateral and Apache assets, so Apache is an RSA
12 target and I just don't want any confusion on that. They're
13 not -- they're dealt with in a different part of the order.

14 THE COURT: I agree with that.

15 MS. TSIOURIS: Your Honor, you said we need to
16 prime party -- I don't understand prime party definition but
17 (indiscernible).

18 I think that sort of incorporates the term into
19 the definition. But I think this protects you, right?
20 Because whatever rights you've got under the RSA you're
21 totally keeping. We're only dealing with a non-RSA party
22 here, and Apache can only be helped by this provision, so
23 their carveout works.

24 MS. TSIOURIS: I think that's right. I think
25 that's right.

1 THE COURT: Okay. I'm going to go back for a
2 moment, now, to the redline so that we can continue to go
3 through that. And just get closer to your screen here for a
4 minute, Mr. Perez.

5 All right, Mr. Carlson, where's the next thing
6 that we need to look at?

7 MR. CARLSON: Page 58 and 57, paragraph 30.

8 THE COURT: (Reviewing order.) That solves the
9 problem I had. All right, are there any other objections or
10 concerns with the DIP order?

11 MR. EISENBERG: Yes, Your Honor. Philip Eisenberg
12 on behalf of US Specialty. Yesterday, in the cross
13 examination of Mr. Hanson, he had indicated that he was
14 aware of no releases that were being granted, but we
15 (indiscernible) in this interim order the unconditional
16 release of prepetition secured parties.

17 And I didn't think that that was appropriate for
18 the first day. He had indicated there weren't any, and then
19 I had thought I had saw in the draft, and I just wanted to
20 highlight that for Your Honor that an unconditional release
21 is being given by the Debtors in an interim order on the
22 first day.

23 MR. PEREZ: Your Honor, it's all subject to
24 challenge, so there is -- it's kind of standard. They're
25 going to lend this money, we're going to need your release

1 on that. I believe that the testimony is, yeah, it's all
2 subject to the -- it's all subject to the challenge.

3 I mean, there's -- all of their rights are
4 preserved. The rights of the Committee are preserved and
5 the rights of everybody else are preserved subject to the
6 challenge. I can't imagine that anybody's going to lend
7 this money without us saying "we're not going to release
8 them."

9 MR. CARLSON: Your Honor, if you go to paragraph
10 23, that's the challenge period paragraph, paragraph 5, it's
11 subject to the right to challenge.

12 THE COURT: Mr. Eisenberg, I had originally read
13 it the way that they are reading it. Are you reading it
14 somehow differently than that?

15 MR. EISENBERG: No. There's two things.
16 Typically, it's a situation as to validity, priority and
17 extent. This is something that is akin to that, and there
18 is a challenge period upon the validity, priority and
19 extent.

20 This is a release of all claims. And so -- and
21 even if it's appropriate for the Debtor to do it as part
22 of his deal, I don't think it's appropriate or permissible
23 to put that into the challenge period and force that relief
24 on third parties. It's one thing with regard to the
25 stipulations; it's another thing with the release of claims

1 themselves in the stipulation.

2 THE COURT: Yeah, I --

3 MR. EISENBERG: And I know this isn't final but
4 this says unconditionally and --

5 THE COURT: It says the Debtors unconditionally
6 release that somebody else can come in and assert it.
7 There's no one in their right mind that lends you
8 \$100 million and doesn't get a release. I'm overruling
9 the objection. I appreciate it and I'm overruling it.

10 MR. EISENBERG: Then I understand that, Your
11 Honor, but what about the making of it binding on third
12 parties? Not the validity, priority and extent but the
13 release of claims?

14 THE COURT: I understand. They need to come in
15 and upset that if they want to. No one's going to lend you
16 \$100 million. I mean, it's -- I just -- this is a lot of
17 money. They're not -- this isn't 50 bucks.

18 MR. EISENBERG: I understand that, Your Honor.
19 All right. I appreciate it. I wanted to bring it to the
20 Court's attention and --

21 THE COURT: No, thank you. I've got no problem
22 with you raising it, but I'm just going to overrule it.

23 MR. EISENBERG: Thank you, Your Honor.

24 THE COURT: Thank you. I'm ruling essentially on
25 the testimony that I have that, you know, taking all things

1 into account, this is the best deal that is available.

2 There are no known claims here that the Debtor is
3 releasing, and this is such standard practice, inside and
4 outside of bankruptcy, that you release the financial
5 institution that lends you substantial amounts of money.

6 It may not apply in a residential home lending
7 context or something like that, but it would always apply in
8 this kind of a situation. The Debtors' getting a huge
9 benefit out of this, and I'm going to authorize it.

10 All right. I have listened to the objections.
11 We've made pretty significant changes in the draft of the
12 order. Having heard the objections, I have sustained some
13 by making changes to the order, overruled others, and for
14 the reasons yesterday and while I was approving the DIP
15 order, I am now approving it in final -- a final interim
16 form and signing the interim order. And --

17 MS. TSIOURIS: Your Honor, I don't know if you can
18 hear me, if my line is still active?

19 THE COURT: I can. And I was about to send it to
20 docketing. So I'm glad you spoke up. Go ahead.

21 MS. TSIOURIS: Thank you. Thank you, Your Honor.
22 I apologize. Just going back to the language, I think it
23 was on the .pdf page 25, that we were looking at, the
24 language that's attached to the RSA Parties

25 THE COURT: Yes.

1 MS. TSIOURIS: We have some parties who we are
2 priming who are not parties to the RSA. For instance, the
3 (indiscernible) lenders and also potentially there's parties
4 who are creditors who have not actually signed the RSA's.

5 THE COURT: Okay. So what language do we need
6 here?

7 MS. TSIOURIS: We need contractual rights of any
8 party that has been permitted to be primed under the
9 existing credit agreements (indiscernible).

10 THE COURT: I'm going to -- I think I can
11 incorporate that. Just a minute.

12 MS. TSIOURIS: Good. Thank you, Your Honor.
13 I believe it should be the (indiscernible) agreement.

14 THE COURT: Okay. Hold on a minute. I'm just
15 trying to make room on the .pdf to get another edit in.
16 (Amending order.) All right. Okay, I'm now editable again.
17 Go ahead and tell me what I need to do.

18 MS. TSIOURIS: Thank you, Your Honor. So I
19 believe it should say, would be -- I just want to catch
20 where I was. Any parties that were not primed by a
21 prepetition credit agreement -- that were permitted to be
22 primed under a prepetition credit agreement.

23 THE COURT: (Amending order.) Is that the language
24 you want? And then I would include the same language down
25 here?

1 MS. TSIOURIS: That's right. And then could I
2 just have -- instead of (indiscernible) including
3 (indiscernible) if they were not properly perfected, they
4 don't jump ahead. They must be properly perfected, and then
5 their contractual rights (indiscernible).

6 THE COURT: But the contractual rights don't have
7 to be perfected. They exist free of perfection. That was
8 the issue.

9 MS. TSIOURIS: Oh, that's right. I'm sorry, Your
10 Honor. Okay, that's fine. That's fine.

11 THE COURT: Okay.

12 MR. EISENBERG: Your Honor, I understand they have
13 the prepetition creditors language but any other party that
14 consented to be primed under this prepetition creditors
15 agreement?

16 THE COURT: I'm not sure there's a difference
17 between those two, but --

18 MS. TSIOURIS: No, I'm sorry. It's to be not
19 permitted to be primed under the prepetition creditors
20 agreement. I agree.

21 THE COURT: Tell me again.

22 MS. TSIOURIS: For other parties, that is not
23 permitted to be primed under the prepetition creditors
24 agreement. It's their right or not permitted to be primed.

25 MR. EISENBERG: I can live with that language.

1 Thank you, Your Honor.

2 THE COURT: (Amending order.) How did I do now?

3 Now that you've put in the "not"?

4 MR. EISENBERG: Thank you so much, Your Honor.

5 THE COURT: Ms. Tsiouris, does that work for you?

6 MS. TSIOURIS: Yes, that's fine.

7 THE COURT: All right, thank you. Let me get this
8 saved. I have now sent the DIP to docketing.

9 All right, Mr. Carlson?

10 MR. CARLSON: Thank you, Your Honor. We have four
11 motions left, the taxes, utilities, consolidated creditor
12 agreements and an extension of the schedules and SOFAs. And
13 my colleague, Jason George.

14 THE COURT: All right. Mr. George, if you would
15 press five star on your phone, please.

16 Ms. Tsiouris, I'm going to leave you available to
17 speak at any point.

18 Mr. Schiable, I see that you had an issue and I
19 apologize I didn't call on you before.

20 Go ahead, Mr. Schiable.

21 MR. SCHIABLE: (Indiscernible.)

22 THE COURT: Thank you. All right, from
23 917-536-1154, is that you, Mr. George?

24 MR. GEORGE: Yes, it is, Your Honor. Good
25 morning. Jason George, Weil Gotshal Manges, proposed

1 counsel to the Debtors. I have four motions to present to
2 the Court today. They're Agenda Items 5 and 7 through 9.
3 They're the taxes motion, utilities, creditor agreements
4 motion and schedules and SOFA motion. I'll present the
5 motions in that order unless Your Honor has a preference.

6 THE COURT: No. You said you wanted to start with
7 taxes? Or what did you want to start with? Just tell me
8 again, which ever one you want to start with is fine.

9 MR. GEORGE: Taxes, Docket No. 5

10 THE COURT: All right. Go ahead, please.

11 MR. GEORGE: Pursuant to the motion, the Debtors
12 request authority to pay certain prepetition taxes owed to
13 various taxing authorities. The Debtors owe approximately
14 \$2.7 million in prepetition taxes consist of franchise
15 taxes, severance taxes property taxes, income taxes and
16 various regulatory assessments.

17 As explained more fully in the motion, the penalty
18 not to pay the taxes and assessments can have very negative
19 impacts on the Debtors' business and operations. Therefore,
20 the Debtors submit that paying prepetition taxes and
21 assessments is a valid exercise of their business judgment.
22 Moreover most, if not all of the taxes would be afforded
23 priority treatment under the Bankruptcy Code, and so payment
24 really is a matter of timing.

25 I'm not sure if Your Honor has any questions. The

1 Debtors respectfully request that the Court grant the
2 motion.

3 THE COURT: All right. Let me hear if there are
4 any objections to the taxes motion. If anyone does
5 objection, would you please press five star on your phone.

6 All right, in a case like this, where the taxes
7 are sought to be paid, it's almost a no-brainer where there
8 are these huge severance taxes that are accruing and you
9 have to deal with your regulators. And it makes no sense
10 not to pay these, that are always going to get paid under
11 every circumstance that one can imagine.

12 The Debtors seek authority. No one is opposing
13 it. I have signed the order, and the taxes are authorized
14 to be paid, and I have sent that to docket.

15 Mr. George, what do you want to do next?

16 MR. GEORGE: Thank you, Your Honor. We'll do the
17 utilities motion, which is filed at Docket No. 11.

18 THE COURT: All right.

19 MR. GEORGE: With this motion, the Debtors are
20 seeking approval of the proposed form of adequate of future
21 payment to utility providers, procedures for resolving
22 objections by utility companies relating the sufficiency of
23 the adequate assurance, and prohibiting the utility
24 providers from altering, refusing or discontinuing the
25 service.

1 The Debtors estimated that the cost of their
2 utility services for the next 30 days will be approximately
3 \$662,500, which is based on the prior twelve months. The
4 Debtors propose placing half that amount into a segregated
5 account for the benefit of the utility providers in the form
6 of adequate assurance.

7 To the extent that the utility companies do not
8 agree with the adequate assurance deposit under the proposed
9 order, they are permitted to seek additional adequate
10 assurance during the Chapter 11 cases.

11 The Debtors believe that the proposed adequate
12 assurance and objection procedures are reasonable and
13 customary. We've reviewed them prior to filing with the
14 United States Trustee's Office and received no objections.

15 I'm not sure if Your Honor has any questions, but
16 I would request the Court grant this motion.

17 THE COURT: So paragraph 8 allows your client to
18 add a utility to the list at any time. So 366 requires that
19 you provide the adequate assurance not later than 30 days
20 from the petition date. this would allow you to add
21 somebody on the 60th day, which means you would not have
22 complied with 366. How can I do that?

23 MR. GEORGE: Well, I think that the reason for
24 that is we have procedures in place where we'd actually
25 increase the allowed deposit to allow for the additional two

1 weeks, so we'd be, you know, replacing any --

2 THE COURT: I understanding. Yeah, no, I
3 understand why it makes sense. I don't understand why it
4 would comply with the statute. The statute says you've got
5 to provide them the adequate assurance within 30 days. And
6 you would not have done that because you didn't even know
7 they were there.

8 MR. GEORGE: That's correct, Your Honor. We think
9 this is a practical resolution. You know, the fact that
10 there's an additional utility provider that should be
11 provided as adequate assurance that this, you know, will
12 give them the ability to do that.

13 THE COURT: I think it's a very practical
14 solution. I don't think it's consistent with the law.
15 That's my question to you, is how is consistent with the
16 law? Congress was really specific here.

17 MR. GEORGE: I guess, Your Honor --

18 THE COURT: Do you want to add them but only
19 within the first 30 days? Would that work for your client?

20 MR. GEORGE: Yeah. Yes, Your Honor, I believe
21 that would be a solution. We'd be agreeable to that.

22 THE COURT: (Amending order.) All right. And do
23 you want your final on August 24th, the same as the others,
24 or did you want a different day for your final?

25 MR. GEORGE: I believe August 24th should be

1 sufficient, Your Honor.

2 THE COURT: All right. Any objection to the
3 utility order by any party?

4 (No response.)

5 THE COURT: All right. As Mr. George says, it's
6 pretty standard fare, and I have signed the order. Mr.
7 George, where do you want to go next?

8 MR. GEORGE: Thank you, Your Honor. The creditor
9 matrix motion is filed at Docket No. 9.

10 THE COURT: All right. Go ahead, please.

11 MR. GEORGE: First, the Debtors are requesting
12 authority to file a consolidated list of creditors and
13 separate matrices for each Debtor and to file a consolidated
14 list of the Debtors' 30 largest unsecured claims.

15 Your Honor, there's 14 Debtors in these Chapter 11
16 cases and thousands of creditors and parties-in-interest.
17 many of the creditors overlap. Therefore, maintaining a
18 single consolidated list of creditors will benefit the
19 Debtors and their estates by allowing Debtors to more
20 efficiently provide the required notices to parties and to
21 (indiscernible).

22 Second, Your Honor, the Debtors also seek
23 authority to redact certain personal information, namely
24 addresses of their employees, from the creditor matrices
25 and the lists of equity security holders, and also redact

1 addresses primarily to protect employees from identify theft
2 and their permission to use (indiscernible).

3 We did discuss this with the United States Trustee
4 prior to filing the motion and language, that we would
5 provide unredacted copies to the Court and upon request to
6 the United States Trustee and counsel for any entities
7 employed in these cases on a confidential, professional
8 eyes only basis.

9 THE COURT: So I'm okay with you up to the point
10 that you say it's a confidential that you say it's a
11 confidential, professional eyes only basis. So the Official
12 Committee, let's say, needs to serve people on the list.
13 How are they going to serve them if they can't use it?

14 MR. GEORGE: That's a good point, Your Honor. I
15 think to the extent that they need to serve the parties, we
16 would provide the address information that they need.

17 THE COURT: I think I'm going to trust both the
18 Committees and the U.S. Trustee to comply with their duties
19 and take out that language. Otherwise, I don't see how they
20 can meet their service obligation to those individuals.

21 Any objection to that change?

22 (No audible response.)

23 THE COURT: Any party object to the motion?

24 (No audible response.)

25 THE COURT: All right. I have signed the order

1 and we'll get that docketed. Let me get that done.

2 All right, what do you have next?

3 MR. GEORGE: Thank you, Your Honor. Last up is
4 the Debtors motion for an extension of time to file their
5 schedules and statement. That's at Docket No. 10.

6 THE COURT: All right.

7 MR. GEORGE: And we're also seeking additional
8 time to file a Rule 2015.3 Reports as well.

9 So for the -- as pertains to the schedules and
10 statements, the Debtors request an extension of the 14-day
11 period to file schedules and statements by an additional 30
12 days through and including September 17, 2020, without
13 prejudice to seek further extensions. Additionally, the
14 schedules in this case is a substantial undertaking. You
15 know, the Debtors and their professionals must compile the
16 information from voluminous books and records related to
17 thousands of claims and parties-in-interest.

18 And Your Honor noted yesterday during the hearing,
19 that Debtors were in the middle of negotiating, you know,
20 very complex transactions. Their resources are currently
21 mainly focused to those goals, therefore given the size and
22 complexity of the case and everything that's currently
23 ongoing, the Debtors believe there's cause -- ample cause to
24 grant the extension.

25 THE COURT: Does anyone oppose the extension of

1 the filing date for the schedules and the statements?

2 (No audible response.)

3 THE COURT: All right. I'm granting your motion.

4 MR. GEORGE: Thank you, Your Honor.

5 THE COURT: Thank you, Mr. George. What else do
6 we have?

7 MR. GEORGE: That's all for me. I'll cede the
8 podium to my colleagues.

9 THE COURT: All right, thank you.

10 MR. GEORGE: Thank you.

11 THE COURT: All right. Mr. Perez, do we have
12 anything further that we're supposed to cover today?

13 MR. PEREZ: No, Your Honor, nothing further. I
14 have a couple of comments. Number one, and I neglected to
15 say this when we were talking about the DIP order. The
16 budget that was filed is a proposed budget, subject to
17 approval, so I just wanted to confirm that, number one.

18 Number two, we are -- we have been exchanging
19 emails on the insurance order. I don't -- we're not quite
20 done yet but hopefully we will have a form of order to give
21 to the Court later this morning and we'll submit and I'm
22 hoping that it will be consensual, but we'll see.

23 Third, Your Honor, in connection with the filing,
24 the Court may have noticed that currently the company does
25 not have any hedges -- that it's subject to any current

1 hedges, or maybe one that's just about to roll off. And
2 having the DIP order entered was one of the prerequisites to
3 restarting the hedging program.

4 So this is just a long way of saying that we may
5 be back to you earlier than the 24th with a hedging motion.
6 And while I know the Court has from time to time indicated
7 that they thought hedging was in the ordinary course of
8 business, unfortunately we have not been able to persuade
9 any counterparties that you're correct. So I think this is
10 your fault --

11 THE COURT: But they are wrong, Mr. Perez.

12 MR. PEREZ: I think this is your fault, Your
13 Honor, not mine, so it's one way of saying we may -- you may
14 see our smiling faces back earlier than the 24th.

15 THE COURT: All right. If you need a hedging
16 motion, go ahead and get it filed. Hopefully, we'll have a
17 Committee up by the time you file your hedging motion, and I
18 do feel pretty strongly that that's ordinary course.

19 If you can get the Committee to agree on such a
20 motion, can you file it as an emergency agreed motion with
21 the Committee? And I'm not going to hold a hearing on a
22 hedging motion if the Committee and you agree that it's
23 ordinary course.

24 I understand you need a comfort matter but, you
25 know, these hearings cost you \$25,000 or more, and I would

1 rather do it without a hearing on something where I disagree
2 with the need for it. I understand your need for the
3 comfort -- I'm not criticizing your need for that even in
4 the slightest, but if you have the Committee on board, and
5 you and the Committee and I are on the same page, I'm not
6 holding a hearing on it, and we'll get the comfort.

7 MR. PEREZ: Thank you, Your Honor. And I just got
8 a note from Mr. Dane that I just want to make sure that what
9 I indicated was what was requested in his note, but I just
10 hadn't seen it before I spoke.

11 THE COURT: All right. If there's anyone else
12 that wants to raise any issue in Fieldwood, now's the time.
13 Otherwise we're going to adjourn Fieldwood and move to our
14 9:00 o'clock docket.

15 (No audible response.)

16 THE COURT: All right, thank you all. Fieldwood
17 is adjourned.

18 (Proceedings adjourned at 9:13 a.m.)
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1 I certify that the foregoing is a correct
2 transcript to the best of my ability produced from the
3 electronic sound recording of the proceedings in the above-
4 entitled matter.

5 /S/ MARY D. HENRY

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